IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4038 OF 2004

Shri.Yellappa Durgappa Patil ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr.Kiran C.Shirguppe for Applicant.

None for Respondent.

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CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 28, 2004.

P.C.

1. This matter was called out in the morning session, when none appeared for the Respondent. As request was made by Mr.More, A.P.P., who was present in Court, for accommodating the concerned A.P.P. Mr.Shinde, who was, at the relevant time, busy in some other Court, the matter was kept back at 2.45 p.m. At 2.45 p.m., when the matter was called out, none appeared for the Respondent. Once again, by way of indulgence, matter was kept back at 4.30 p.m. Even at 4.30 p.m., none appears for

the Respondent.

2. I am informed by Mr.More, A.P.P. that the brief is assigned to Mr.S.R.Shinde, who is a Panel Counsel. The Counsel for the Applicant is not ordinarily practising in this Court. It is in that backdrop, the matter was kept back on more than one occasion. However, it is not possible to wait for the concerned A.P.P. indefinitely. In the circumstances, I have no option but to proceed with the hearing of the case. Mr.More, A.P.P. states that Mr.Shinde must be busy in some other Court, but he is not certain about this position.

3. Heard Mr.Shirguppe for the Applicant. This Application has been filed in terms of the liberty granted by this Court by order dated 8th July 2004. As per the said liberty, the Applicant first applied before the Sessions Court for grant of bail, which application has been rejected by order dated 29th July 2004.

4. The Applicant has been charged for offences punishable under Sections 302, 341, 504

read with Section 34 of the Indian Penal Code in connection with C.R.No.36 of 2004, which pertains to the incident dated 13th April 2004. On that date, Suvarna Maruti Shirke (since deceased) was admitted to hospital, as she had burn injuries. Dying declaration was recorded on the same day i.e. on 13th April 2004, when the deceased stated that she caught fire accidentally. However, an application was moved by father of deceased, stating that the deceased will like to change her statement, as her earlier statement is given under duress. In view of this representation, second dying declaration came to be recorded on 15th April 2004, in which, the deceased has alleged that the Applicant and his wife were responsible for the fire. The argument of the Applicant is that the second dying declaration is an afterthought and is obviously, a tutored dying declaration. It is further argued that the second dying declaration cannot be taken into account because that is recorded by the Assistant Police Inspector in the presence of Dr.Chandrakant Tiwari. It is contended that in such a situation, it was appropriate to record dying declaration in the presence of

Executive Magistrate, which has not been done, which creates doubt about the efficacy of the second dying declaration.

5. After considering the submissions and perusing the documents, which have been placed on record on the affidavit, I find substance in the grievance made by the Applicant. In the first place, the second dying declaration is recorded after a gap of two days, at the instance of the father of the deceased. The possibility of the same being tutored and afterthought, cannot be ruled out. In any case, the said dying declaration has been recorded by the Assistant Police Inspector and not by the Executive Magistrate. Even for that reason, the Applicant deserves to be enlarged on bail. The Applicant is in jail since April 2004. Investigation has been completed, charge-sheet is also filed. In the circumstances, Applicant is enlarged on bail on the following terms:

(a) The Applicant is enlarged on bail in connection with C.R.No.36 of 2004 registered with Jaisinghpur Police Station

on executing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one or two sureties in the like amount.

(b) The Applicant shall regularly attend the proceedings before the Trial Court on every specified date.

(c) The Applicant shall co-operate in early disposal of the case. If the Trial Court is of the opinion that the Applicant is creating any obstacle in the early disposal of the case, that can be a ground for cancellation of his bail.

(d) The Applicant shall report to the concerned Police Station on first Saturday of every English Calender Month between 11.00 a.m. to 2.00 p.m. till the conclusion of the trial or as may be required by the concerned Investigating Officer.

(e) The Applicant shall not influence the

prosecution witness or tamper with the evidence in any manner whatsoever.

. All concerned to act on the ordinary copy of this order, duly authenticated as true copy by the Office.

A.M.KHANWILKAR, J.